THIRD DIVISION

[G.R. Nos. 244214-15. March 29, 2023]

REPUBLIC OF THE PHILIPPINES, REPRESENTED BY THE DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS, PETITIONER, VS. SERGIO C. PASCUAL, DOING BUSINESS UNDER THE NAME AND STYLE OF SCP CONSTRUCTION, RESPONDENT.

D E C I S I O N

GAERLAN, J.:

Before the Court is a Petition for Review on *Certiorari*[1] filed by the Office of the Solicitor General (OSG) on behalf of Republic of the Philippines, represented by the Department of Public Works and Highways (petitioner) to assail the Decision[2] dated February 28, 2018 and Resolution[3] dated January 10, 2019 of the Court of Appeals (CA) 14th Division in CA-G.R. SP Nos. 143721 & 145399. Said rulings of the CA affirmed with modifications the Final Award[4] dated April 8, 2016 of the Construction Industry Arbitration Commission (CIAC) in CIAC Case No. 13-2015 (*vis-à-vis* CA-G.R. SP No. 145399), and dismissed the Petition for *Certiorari* and Prohibition[5] filed by the OSG on behalf of Petitioner in CA-G.R. SP No. 143721.

Antecedents of the Case

Petitioner awarded two Contract Agreements dated September 4, 2008[6] and March 23, 2010[7] to Sergio C. Pascual, doing business under the name and style of SCP Construction (respondent) for two projects: the first being the construction of the Junction Sayre Highway-Aglayan-Alanib-Ticalaan Road (Ticalaan-Paganan Section) in the Province of Bukidnon, and the second being the road upgrading (gravel to paved) of the Gingoog-Claveria-Villanueva Road in the Province of Misamis Oriental. The first project had a total contract price of P95,329,847.68, while the second project had a total contract price of P24,513,428.59.

After respondent accomplished the two projects, petitioner duly had them inspected. As to the first project, the Constructors' Performance Summary Report[8] (using the Constructors'

Performance Evaluation System) dated August 11, 2012 gave it a final rating of 29.60% with a qualitative description of "poor."[9] Numerous corrective actions were also recommended for the accomplished first project due to the sheer number of defects in the final output. Petitioner's Regional Inspectorate Team (Region X) submitted its Final Inspection Report[10] dated January 30, 2013, which noted that the first project was "100% complete with defects and deficiencies."[11] Petitioner's Regional Director (Region X) duly informed respondent of the said defects and deficiencies and instructed the latter to immediately rectify the same in a Letter[12] dated January 31, 2013. Upon re-inspection, the Regional Inspectorate Team issued a Joint Final Re-Inspection Report[13] dated July 23, 2013 with the notation that "the defects form item[s] 1 to 7 (seven) were not rectified; for item 8 not the fault of the contractor; and item no. 9 is already rectified."[14]

Petitioner's Regional Director thereafter sent Respondent a Letter of Notice to Terminate[15] dated September 5, 2013, which had the following dispositive portion:

> Records of this office show that you failed to comply with our order to rectify and make the necessary corrections on the project despite being given proper notice and opportunity to do so. Thus, based on that ground, your firm is given seven (7) days from receipt hereof to submit a verified position paper to show cause as to why the contract should not be terminated.
>
> Failure on your part to act on this matter after the lapse of the seven (7)-day period shall constrain this office to issue an order terminating your contract.[16]

Instead of submitting a verified position paper, Respondent merely replied with a Letter[17] to Petitioner's Regional Director dated September 18, 2013, which stated the following:

> Under the guidelines on termination of contracts [in] Government Procurement Policy Board Resolution No. 018-2004 in relation to the Government Procurement Reform Act (RA 9184), that is: "*abandons the contract works, refuses or fails to comply with a valid instruction of the Procuring Entity, or fails to proceed expeditiously and without delay despite a written notice by the Procuring Entity,*"
>
> How could the project be terminated when it was already completed and the final inspection was conducted by your Regional Inspectorate Team? The joint re-inspection of the project was also conducted with the representative of the

> contractor; it is admitted, however, that there are deficiencies which were noted during the joint re-inspection.
>
> We had started the rectification of some defects and deficiencies which requires [*sic*] repairs and corrections listed in the punch list during final joint re-inspection. The project inspector assigned during the construction stage who is presently assigned to the on-going construction implemented by your end adjacent the project has witnessed the rectification works. Presently, the access roads to the project site are deteriorated due to frequent rain on that area (sometime[s] un-passable to the [sic] small vehicle[s]), so the delivery [of] construction materials and tools used for rectification were affected. Attached herewith is the photograph showing the project is on-going rectification works.
>
> Thus, quite evident[ly], we never abandoned the project, and in fact the rectification work is on-going.
>
> Hence, we are requesting for the reconsideration that the project will not be terminated. We are very much enthusiastic to complete rectification works of the project so that the certification of completion shall be issued to us by your end.[18] (Italics in the original)

In the Decision for Contract Termination[19] dated October 8, 2013, Petitioner's Regional Director noted that respondent's Letter "failed to provide adequate and sufficient reasons to justify [the latter's] persistent failure and considerable delay in making the necessary repairs and corrections," and this was already "taking into consideration the fact that the contract had already expired on September 20, 2009, and that [Respondent] was duly given proper notice and ample opportunity to make the rectifications."[20] The Decision for Contract Termination had the following dispositive portion:

> WHEREFORE, the contract, pertaining to Contract ID No. 08K00014 (Project ID No. 1003-08-H-000-4): For Road Upgrading (Gravel to Paved) of Jet. S.H. Aglayan-Alanib-Ticlaan Road, Ticlaan-Paganan Section, Talakag, Bukidnon is hereby TERMINATED. Your firm is hereby directed to cease and desist from proceeding with the contract. A Joint Inventory shall be conducted to evaluate the progress billing and accomplishments in the subject project.

> This order is without prejudice to other actions and/or sanctions that this office may impose under the law.
>
> The termination of the contract is effective upon receipt of this decision.[21]

As for the second project, its Constructors' Performance Summary Report[22] dated August 7, 2012 gave it a final rating of 25.50% and a similar qualitative description of "poor."[23] Numerous corrective actions were also proposed for a number of defects and deficiencies, which were also noted in the Final Inspection Report[24] dated January 21, 2013—albeit without a percentage of completion stated. Petitioner's Regional Director duly informed respondent of the defects and deficiencies and instructed the latter to rectify the same *via* a Letter[25] dated January 28, 2013. Upon re-inspection, the Regional Inspectorate Team issued its Joint Final Re-Inspection Report[26] dated July 24, 2013 with the notation that "the defects rated from item 1 to 6 and 8 were not rectified, and item 7 scoured shoulder on selected sections [are] still to be rectified."[27]

Similar to the first project, petitioner's Regional Director sent respondent a Letter of Notice to Terminate[28] also dated September 5, 2013 with more or less the same statements. Instead of submitting a verified position paper, respondent sent a Letter[29] also dated September 18, 2013 and which contained the very same particulars in his Letter relative to the first project's termination. Petitioner's Regional Director duly issued the Decision for Contract Termination[30] for the second project also on October 8, 2013 with the following particulars:

> It may be recalled that a notice to rectify the defects noted in the Final Inspection Report was received by your office on January 30, 2013. However, despite notice and adequate time to rectify, your firm failed to comply with the aforementioned order. Another inspection was conducted on March 8, 2013 to verify if corrections were made on the cited defects, but it was revealed that your firm has not started rectifying the defects/deficiencies. Moreover, during the Joint Re-Final [*sic*] Inspection conducted by this office with your representative Alberto M. Buenavides on July 21, 2013, the members of the Inspectorate Team noted that "the defects noted from item 1 to 6 and 8 on the final inspection dated January 24, 2013 were not rectified. Item 7 scoured shoulder on selected sections still to be rectified."

> In your letter dated September 18, 2013, it was admitted that there were noted deficiencies during the joint re-inspection and that the rectification work is still "on-going." The letter also failed to show cause your firm failed to deliver a fully completed project free from defects and deficiencies despite the lapse of time from the expiration of the contract on October 21, 2011, and despite lawful order from this office to rectify.
>
> Considering that your firm had been afforded sufficient time to comply with your obligations under the contract but still failed to do so, termination of the subject contract is deemed meritorious. Thus is without prejudice to other actions and/or sanctions that this office may impose under the law.
>
> Your firm is hereby directed to cease and desist from proceeding with the contract. A Joint Inventory shall be conducted to evaluate the progress billing and accomplishments in the subject project.

Petitioner, through then-Secretary Rogelio L. Singson, also issued Department Order No. 19 (s. 2014),[31] which suspended and blacklisted respondent from participating in any bidding or contracts with petitioner for a period of one (1) year—precisely citing the termination of the two projects during the previous year.

Proceedings before the CIAC

On July 6, 2015, respondent filed a Request for Arbitration[32] with CIAC relative to the two projects. In his Complaint[33] dated June 16, 2015, respondent made the following main allegations:

1) The Contract Agreements for the two projects have arbitration clauses incorporated by operation of law, and duly vested the CIAC with jurisdiction over the controversy.
2) The action is not time-barred, since the Request for Arbitration and subsequent Complaint were filed within 10 years from the time respondent's right action of action accrued (*i.e.*, when petitioner terminated the two projects).
3) The Constructors' Performance Summary Reports of both projects indicate that the actual physical accomplishment for the same was 98.78% for the first project and 95.20% for the second project, all as of July 31, 2012.
4) Respondent had been at odds with petitioner's Regional Director for some time, and this allegedly resulted in respondent's unwarranted and malicious blacklisting and post-disqualification for a subsequent project.
5) At the time of the filing of the Complaint, petitioner had not paid respondent the final billings under both projects, *i.e.*, at least P9,532.984.76 for the first project, and at most P2,450,275.23 for the second project.

Aside from payment of the abovementioned unpaid final billings, respondent also prayed for moral damages (P1,000,000.00), exemplary damages (P500,000.00), primary costs of suit, attorney's fees equivalent to ten percent (10%) of the total claimed award, and legal interest as may be determined by CIAC.

The OSG, on petitioner's behalf, filed a Motion to Dismiss (with Nomination)[34] relative to the Complaint with the following main assertions:

1) CIAC had no jurisdiction over the controversy, since the parties had never agreed to voluntary arbitration. Respondent never pointed to any arbitration agreement or clause contained in the Contract Agreements, and the special conditions of contract attached to the Complaint was merely a sample and pertaining to a totally different contract.

2) Alternatively, the Complaint was time-barred due to respondent's failure to refer the Decisions for Contract Termination to an appointed and agreed-upon arbiter within 14 days from notice, as specified in the Philippine Bidding Documents on Procurement of Infrastructure Projects (Second and Third editions). Notably, respondent also failed to indicate in his Complaint the dates when he received the said Decisions for Contract Termination.

3) Respondent also failed to fulfill the pre-conditions to CIAC arbitration as required by CIAC rules, which is the exhaustion of all administrative remedies, or in the alternative, an allegation of unreasonable delay on a claim's action. Since there is no showing in the record that respondent even attempted to communicate or appeal the Decisions for Contract Termination with petitioner's higher authorities, the CIAC should either dismiss the Complaint outright or alternatively suspend proceedings pending exhaustion of said administrative remedies.

4) The OSG also nominated a preferred member of the arbitral panel to be formed by CIAC.

In his Opposition[35] to petitioner's Motion to Dismiss, respondent re-asserted that Republic Act (R.A.) No. 9184,[36] otherwise known as the Government Procurement Reform Act, provided for the CIAC's jurisdiction over the controversy and that its relevant provisions governing CIAC arbitration were deemed incorporated into the Contract Agreements. Moreover, the Philippine Bidding Documents specifically mention the CIAC as the competent institution to resolve construction disputes in the template General Conditions of Contract, and this explicit designation makes CIAC the arbiter agreed upon by the parties to a construction contract as stated in the template Special Conditions of Contract.

Respondent also argued that the Complaint was simply for the collection of unpaid billings for already accomplished, along with the damages prayed for, and that the claims were never the subject of petitioner's Decisions for Contract Termination. Moreover, respondent could no longer exhaust any administrative remedy (if any) since he was already blacklisted

by petitioner, and even with respondent's filing of a petition for *certiorari* and prohibition with the Regional Trial Court of Butuan City relative to said blacklisting by petitioner's Regional Director,[37] respondent virtually had no more legal course in the administrative realm for his collection of his unpaid billings. Citing the precedent set in *Vigilar v. Aquino*,[38] which involved the Court's invocation of equity in allowing a contractor's collection suit for unpaid billings against petitioner on a *quantum meruit* basis (despite the apparent non-exhaustion of administrative remedies), respondent asserted that he could already invoke the CIAC's jurisdiction without requesting or awaiting any further action on petitioner's part.

In the OSG's Reply[39] to respondent's Opposition, petitioner highlighted the indispensability of consent to arbitration for the CIAC to exercise jurisdiction over the case, and asserted anew that there exists no arbitration clause or separate agreement for CIAC arbitration in the Contract Agreements. Petitioner also reiterated that respondent's Request for Arbitration was time-barred, and pointed out that respondent's claims for unpaid billings are inseparable from the terminated Contract Agreements. Crucially, petitioner asserts that respondent's proper recourse was to file a money claim with the Commission on Audit (COA), and that ultimately, since petitioner is a department and instrumentality of the Philippine Government, it cannot be sued without state consent. And finally, Respondent's invocation of Article 1144[40] of R.A. No. 386, otherwise known as the Civil Code of the Philippines, is inaccurate due to the language of Article 1148[41] thereof.

In its Order[42] dated November 12, 2015, the CIAC denied petitioner's Motion to Dismiss and directed it to file its Answer, *viz.*:

> IN VIEW OF THE FOREGOING CONSIDERATIONS, the Tribunal HEREBY DENIES Respondent's Motion to Dismiss. Respondent is directed to file its Answer on or before 26 November 2015 as agreed upon during the Case Management Conference on 5 November 2015. The preliminary conference is set on 3 December 2015 9:30 AM at the DTI Regional Office, Mintrade Bldg., Monteverde Ave. cor. Sales St., Davao City.
>
> SO ORDERED. 12 November 2015, Makati City.[43]

On the issue of whether or not there was indeed an arbitration clause in the Contract Agreements, the CIAC reasoned that the agreement to arbitrate contained in the General

Conditions of Contract formed part of the same, *viz.*:

> Under paragraph (j) of Section 17 of Article VI of RA 9184, the General Conditions of Contract shall form part of the bidding documents.
>
> As expressly stated in the Form of Contract Agreement between the parties to this case (*Annexes "C" and "D" of the Complaint*), the General Conditions of Contract shall be construed as part of the agreement. As such, by reference the arbitration clause provided in Section 21.3 of the General Conditions of Contract in the 3rd Edition of the Philippine Bidding Documents on Procurement of Infrastructure Projects is deemed part of the Contract Agreement between Claimant and Respondent. It bears stressing that under the Notes on the General Conditions of Contract, [specifically under] Section TV of the Philippine Bidding Documents of the Government[,] the provisions of the General Conditions of Contract shall not be altered and shall form part of the required documents expressing the rights and obligations of the parties.[44] (Italics in the original)

As to the issue of whether or not respondent's Request for Arbitration was already time-barred, the CIAC reasoned thus:

> The Tribunal finds that there is nothing in the Philippine Bidding Documents which clearly states that the 14-day period is a prescriptive period[,] the non-observance of which bars the filing of a claim. In any case, the Philippine Bidding Documents is not a law and there is also nothing in RA 1984 which authorizes its issuance by the GPPB which expressly provides that disputes concerning government infrastructure contracts shall prescribe in 14 days from the time the cause of action accrues. As such, the Tribunal will apply Article 1144 of the Civil Code.[45]

And with regard to the issue of whether or not respondent failed to exhaust administrative remedies prior to resorting to CIAC arbitration, the CIAC noted that there was actually no pre-condition agreed upon in the Contract Agreements, and that petitioner's delay in settling respondent's unpaid billings constituted unreasonable delay that justified the filing Request for Arbitration without any further action requested from petitioner, *viz.*:

> The Tribunal finds that there is no cause to suspend the proceedings in this case as there appear to be no contract pre-condition in any event, as stated in the complaint. Complainant's prior demands for payment in 2012 and 2013 have remained unheeded (paragraph 37 of the Complaint). As such, a period of at least 3 years has already passed, and no action or communication has been made by Respondent. This substantially complies with the requirement of the pre-condition of a statement of administrative remedies having been exhausted[,] and [that] there is unreasonable delay in acting upon the claim.[46]

Aggrieved, petitioner, filed its Petition for *Certiorari* and Prohibition (with Urgent Application for Temporary Restraining Order and Writ of Preliminary Injunction)[47] with the CA, which was docketed as CA-G.R. SP No. 143721. Petitioner prayed for the staying of CIAC's proceedings relative to the case, the nullification of CIAC's Order dated November 12, 2015 which denied petitioner's Motion to Dismiss, and the ultimate dismissal of the case. Respondent duly filed his Comment/Opposition,[48] which manifested that petitioner's prayer for injunctive relief had been rendered moot by the due disposition of the case below by the CIAC, which will be discussed presently.

After the filing of petitioner's Answer *Ad Cautelam*[49] and further proceedings relative to the case, the CIAC promulgated its Final Award[50] dated April 8, 2016 with the following dispositive portion:

> WHEREFORE, AWARD is hereby made as follows:
>
> FOR THE CLAIMANT
>
> P9,011,048.55 – Remaining Balance of the First Project
> P2,450,275.23 – Remaining Balance of the Second Project
> P200,000.00 – For Attorney's Fees
> P593,623.92 – Reimbursement for Arbitration Cost
> **P12,254,947.70 – Total Award for Claimant**
>
> Respondent REPUBLIC OF THE PHILIPPINES (DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS REGION X, CAGAYAN DE ORO CITY) is directed to pay Claimant SERGIO G. PASCUAL said amount of TWELVE MILLION TWO

> HUNDRED FIFTY-FOUR THOUSAND NINE HUNDRED FORTY-SEVEN PESOS and 70/100 (P12,254,947.70) with interest at 6% per annum until full payment is made.
>
> SO ORDERED.[51] (Emphasis in the original)

On the issue of whether or not the first and second projects were completed by respondent, the CIAC exhaustively discussed the following:

> It is the finding of the Tribunal that there is substantial evidence to support the conclusion that both Projects are already complete. What remained only were defects or punch list works that need rectification[,] the existence of which do not detract from the undeniable fact that Claimant completed the First and Second Projects.
>
> There should be no dispute that as of January of 2013, that [*sic*] the two Projects are already 100% complete. The testimonial and documentary evidence amply supports this fact. While Respondent made a qualifying statement of the Projects not being complete in terms of quality, it nevertheless agreed with the basic proposition that both projects were completed (*paragraph 5[,] page 2 and paragraph 14[,] page 4 of the Joint Affidavit of Respondent*).
>
> The Joint Inspection Report dated 30 January 2013 (*Exhibit "R-3" and Exhibit "C-9"*), which is evidence common to both parties, expressed in no uncertain terms that the First Project was already 100% complete albeit with defects. This was expressly confirmed by Respondent's Regional Director in the Notice to Terminate (*Exhibit "R-6"*). There is also the letter of the OIC Construction Division of the Respondent[,] which referred to the inspection of the completed First Project (*Exhibit "C-12"*).
>
> The records obtained by Claimant from Respondent's website[,] specifically the Contract Information (*Exhibit "C-20"*) placed the percentage of Work Accomplishment for both projects at 100% (*Exhibit "C-20-D" and Exhibit "C-2[0]-E*), furthermore, based on the Final Inspection Reports (*Exhibit "C-9" with sub-markings, Exhibit "C-19" with sub-markings, Exhibits "R-3" and "R15"*), there is practically no mention of any pending works or balance of works but only

> defective works that require rectification as evidenced by the entries in the remarks column of said reports.
>
> The fact that final inspections were done by Respondent for both projects draws only to the logical conclusion of the completed First and Second Projects. There is absolutely no reason or sense in Respondent conducting a "final" inspection of projects that are not yet completed. Most importantly, during the hearing and upon clarification by the Honorable Tribunal[,] witness for Respondent admitted that the roads subject of the two contracts became open for public use and is still being used up to now despite the defects.
>
> In the Decisions on Contract Termination (*Exhibits "R-8" and "R-20"*), the factual consideration taken into account by Respondent was Claimant's failure to make the necessary repairs and corrections[,] which could only mean rectification works and not uncompleted works or works which form part of the scope of the Contract[s] that have not been accomplished by Claimant.[52] (Italics in the original)

As to the issue of whether or not petitioner validly terminated the Contract Agreements, CIAC found that the terminations were unwarranted given the circumstances, *viz*.:

> The Tribunal finds that the termination was not warranted under the relevant circumstances of this case and invalid considering the pertinent laws[,] rules and regulations.
>
> As already earlier found by this Tribunal[,] the two Projects were indubitably established as completed Projects before the Notice to Terminate was given, subject only to punch-listing or rectification works. In the construction industry[,] punch-list works pertain to the rectification of already completed works and does [*sic*] not pertain to a situation where there are pending works or part of the scope of the contracts not yet completed. To reiterate, there would have been no practical reason for a "final" inspection being done by Respondent in the first place if the two Projects have yet to be completed. The fact that the roads, subject of the two Projects, have since been used and [are] still presently being used, as confirmed by witnesses for Respondent during the hearing, proves that the two Projects have indeed been completed by Claimants [*sic*]. Since both

> projects have been completed, the contracts covering the First and Second Projects could not have been possibly terminated by Respondent. No reasonable sense can be had over the termination of a contract which has been actually and fully implemented to completion. Simply put[,] at the time of the termination of the two Projects[,] there was nothing to terminate, logically speaking, as the contracts have long been completed with only pending and disputed rectification works.[53]

CIAC further reasoned that under Government Procurement Policy Board (GPPB) Resolution No. 018-2004 (s. 2004), there can be no valid termination of contracts that have already been fully accomplished. The only kinds of termination under the said Resolution's Guidelines on Termination of Contracts are two: *termination in part* (defined as "the termination of a part but not all of the work that has not been completed and accepted under a contract"[54]), and *termination in whole* (defined as "the termination of all of the work that has not been completed and accepted under a contract"[55]). Both apparently require that a project be unfinished/uncompleted for a valid termination. The CIAC elaborated further:

> Curiously in this case, there is nothing in the Decisions to Terminate by Respondent (*Exhibit "R-8" and Exhibit "R-20"*) that would indicate the extent of termination whether in whole or in part as required under existing regulations. Of course in this case[,] it would be impossible to state the extent of the termination because with the Projects already completed[,] no part and certainly not the whole contract could have possibly been terminated by the Respondent.[56]

Moreover, the CIAC reasoned that notices of contract termination could only be issued during the pendency of contract implementation and completion, and thus, respondent's failure to complete rectification works as directed by petitioner—being beyond the ambit of contract implementation and completion, since the two projects were already completed—could not be invoked by petitioner as a ground to terminate the Contract Agreements.

CIAC also discussed the quality of the two completed projects as not having a major effect of breach of respondent's contractual obligations, *viz.*:

> Lastly, the Tribunal notes from the Final Inspection Reports (*Exhibit "C-9," Exhibit "C-19," Exhibit "R-3" and Exhibit "R-15"*) that majority of the remarks ineluctably involve minor defects with most of the remarks involving application of pave grout, patching with concrete epoxy and removing hardened spilled concrete[,] among others. While there is noted major scaling[,] it pertains to only a few stations. In any event, termination of completed projects on account of defects which are still being rectified for such type of defects can hardly be considered as fundamental breaches of the contract which would justify termination. Under the Civil Code on rescission of contracts, while the power to rescind is implied in reciprocal obligations (*Article 1191 Civil Code*), a substantial breach is necessary or such breach as would defeat the fundamental objective of the parties in entering into a contract, as opposed to casual or slight breaches to justify the cancellation of the contract (*Maglasang vs. Northwestern Inc., University, G.R. No. 188986, March 20, 2013*). The Tribunal does not find under the circumstances as already stated in this Award such fundamental breach of the contract as would justify the termination by the Respondent.[57] (Italics in the original)

As for respondent's entitlement to its unpaid billings, the CIAC ruled that since there was no valid termination of the Contract Agreements, there was no legal reason for petitioner to withhold payment. And since the works were already 100% completed, petitioner was erroneous in labeling the requested payments as "progress billings." However, respondent was not entitled to the release of retention monies for both projects due to lack of substantial evidence to prove completion of the rectification works. Respondent was also not entitled to his claim for moral and exemplary damages due to lack of clear and convincing evidence of petitioner's bad faith or malice.

Without filing a motion for reconsideration, petitioner filed its Petition for Review[58] dated May 16, 2016 with the CA. Said Petition was docketed as CA-G.R. SP No. 145399 and eventually consolidated with its previous Petition for Review in CA-G.R. SP No. 143721.

Ruling of the CA

In its Decision[59] dated February 28, 2018, the CA 14th Division disposed of petitioner's two actions as follows:

> WHEREFORE, in light of the foregoing premises, the Petition for Certiorari in CA-G.R. No. 143721 is hereby DISMISSED while the Petition for Review in CA-G.R. No. 145399 is hereby DENIED. Nonetheless. insofar as the CIAC's Final Award, it is hereby AFFIRMED with MODIFICATIONS insofar as the award for the remaining balance under the Second Project in the amount of P2,450,275.23, but the grant of attorney's fees and arbitration costs are hereby DELETED for lack of factual and legal foundation.
>
> SO ORDERED.[60]

The CA gave the following reasons for its joint ruling:

1) There was indeed an agreement in writing between the parties for resort to CIAC arbitration, in accord with standing law and jurisprudence, and the CIAC was correct in applying its jurisdiction to the case.

2) Petitioner's declaration of the first project's 100% completion (save for defects) entitled respondent to payment for the same, but the absence of any declaration on the part of petitioner *vis-à-vis* the second project's completion did not entitle respondent to the said project's remaining balance.

3) Petitioner's assertion that respondent's proper recourse was with COA *via* a money claim was without basis, since CIAC clearly had jurisdiction over the controversy due to the arbitration clause by reference.

4) Finally respondent was indeed not entitled to attorney's fees and arbitration costs, since Rule 142, Section 1 of the Rules of Court stated that "[n]o costs shall be allowed against the Republic of the Philippines unless otherwise provided by law."

Petitioner duly filed its Omnibus Motion for Partial Reconsideration and Rectification of the Decision's Decretal Portion,[61] while respondent also filed his Motion for Partial Reconsideration.[62] In its Resolution[63] dated January 10, 2019, the CA resolved the said Motions in the following manner:

> Accordingly, We hereby DENY the Motions for Partial Reconsideration of both the Republic and Pascual from the subject Decision. We, however, deem it proper to RECTIFY the decretal portion of Our February 28, 2018 Decision, as correctly underscored by the Republic, to read as follows:
>
> ["]WHEREFORE, in light of the foregoing premises, the Petition for Certiorari in

> CA-G.R. SP No. 143721 is hereby DISMISSED while the Petition for Review in CA-G.R. SP No. 145399 is hereby DENIED. Nonetheless, insofar as the CIAC's Final Award, it is hereby AFFIRMED with MODIFICATIONS insofar as the award of the remaining balance under the Second Project in the amount of P2,450,275.23, the grant of attorney's fees, and arbitration[s] cost [*sic*] which items are hereby DELETED for lack of factual and legal foundation.["]
>
> SO ORDERED.[64]

Hence, the instant Petition.

Arguments of the Parties

Petitioner re-asserts the following in support of its prayer for the reversal and setting aside of the CA's rulings and the nullification of the CIAC's Final Award:

1) Respondent's Request for Arbitration and concomitant invocation of the CIAC's jurisdiction was time-barred, given that the Philippine Bidding Documents on Infrastructure specified the period of only 14 days within which a construction dispute may be referred to a designated arbiter.

2) Assuming that respondent's Request for Arbitration was not time-barred, he still did not comply with the preconditions to arbitration, specifically, the exhaustion of the supposed administrative remedy of appealing to petitioner's head of agency (*i.e.*, then-Secretary Singson).

3) Respondent was actually not entitled to the remaining balance under the first project, since the defects therein were enough to preclude further payment.

For his part, respondent argues in his Comment/Opposition[65] asserts the primacy of Article 1144 of the Civil Code over the minutiae in the Philippine Bidding Documents on Procurement of Infrastructure Projects, the latter not having the nature of rigid rules with mandatory effect. Moreover, exhaustion of administrative remedies here is not applicable as a precondition to CIAC arbitration due to the fact that his blacklisting and the unreasonable delay in payment of the outstanding balances for the two projects gave him no choice but to invoke CIAC jurisdiction. Respondent further asserts that it is entitled to the retention money for both projects since it duly completed the works thereon.

Issues before the Court

For the Court's resolution are the following issues:

1) Whether or not there was indeed an agreement between the parties for CIAC arbitration;

2) Whether or not respondent's proper recourse was indeed a money claim cognizable before the COA;

3) Whether or not respondent's Request for Arbitration filed before the CIAC was indeed time-barred;

4) Whether or not respondent failed to exhaust administrative remedies as a precondition to CIAC arbitration; and

5) Whether or not respondent was entitled to the amounts prayed for.

Ruling of the Court

The instant Petition must be denied for lack of merit.

At the outset, the Court is reminded that Petitions for Review on *Certiorari* filed under the auspices of Rule 45 of the Rules of Court are only to cover pure questions of law, as well as errors of law on the part of the appellate court.[66] This Court is indeed not a trier of facts, and "[f]actual findings of the appellate courts will not be reviewed nor disturbed on appeal to this Court," particularly "when supported by substantial evidence."[67] Thankfully, the first four issues for the Court's consideration are indeed pure questions of law, while the fifth and last will merit a summary discussion in the end regarding how the CA did not commit any reversible error in any event.

As to the first issue of whether or not there indeed was an agreement between the parties for CIAC arbitration, the Court looks to the terms of the Contract Agreements themselves. The Contract Agreement for the first project states on its first page[68] that certain documents "shall be attached, deemed to form, and be read and construed as part of this CONTRACT AGREEMENT."[69] The first set of documents enumerated thereunder are the bidding documents for the contract (attached as Annex A), with the first sub-item thereunder being the General Conditions of Contract. The same goes for the Contract Agreement for the second project.[70] The 2009 Revised Implementing Rules and Regulations (IRR) of R.A. No. 9184—which were effective at the time—states in Rule XI, Section 37.2.3 thereof that both the contract agreement and the bidding documents "shall form part of the contract." Thus, a simple reference to what is contained in the General Conditions of

Contract as provided for in the Philippine Bidding Documents for Procurement of Infrastructure Projects (PBDPIP) is in order.

The OSG is correct in pointing out that Section 20.1 of the Second edition and Section 21.2 of the Third edition of the PBDPIP are categorical in providing for the period within which an infrastructure project dispute may be referred to an arbiter, *viz*.:

> If the Contractor believes that a decision taken by the PROCURING ENTITY's Representative was either outside the authority given to the PROCURING ENTITY's Representative by this Contract or that the decision was wrongly taken, the decision shall be referred to the Arbiter indicated in the SCC within fourteen (14) days of the notification of the PROCURING ENTITY's Representative's decision.[71] (Underscoring in the original)

This provision is actually rendered redundant by the express provision of the 2009 Revised IRR of R.A. No. 9184 relative to the incorporation of CIAC jurisdiction if applicable to a controversy. Subsection 59.2, Section 59, Rule XVIII of the 2009 Revised IRR, which is incorporated word for word in the PBDPIP (*i.e.*, Section 20.2 of the Second edition and Section 21.3 of the Third edition), states the following:

> Any and all disputes arising from the implementation of a contract covered by the Act and this IRR shall be submitted to arbitration in the Philippines according to the provisions of Republic Act No. 876, otherwise known as the "Arbitration Law": ***Provided, however,*** **That, disputes that are within the competence of the Construction Industry Arbitration Commission to resolve shall be referred thereto. The process of arbitration shall be incorporated as a provision in the contract that will be executed pursuant to the provisions of the Act and this IRR**: *Provided, further*, That, by mutual agreement, the parties may agree in writing to resort to other alternative modes of dispute resolution. (Emphasis and underscoring supplied; italics in the original)

Section 4 of Executive Order (E.O.) No. 1008 (s. 1985), as reiterated in Section 2.1, Rule 2 of the 2010 CIAC Revised Rules of Procedure Governing Construction Arbitration (which governed the parties at the time), provides for the jurisdiction of the CIAC, *viz*.:

> Sec. 4. *Jurisdiction*. – the CIAC shall have original and exclusive jurisdiction over disputes arising from, or connected with, contracts entered into by parties involved in construction in the Philippines, whether the dispute arises before or after the completion of the contract, or after the abandonment or breach thereof. These disputes may involve government or private contracts. For the Board to acquire jurisdiction, the parties to a dispute must agree to submit the same to voluntary arbitration.
>
> The jurisdiction of the CIAC may include but is not limited to violation of specifications for materials and workmanship; violation of the terms of agreement; interpretation and/or application of contractual time and delays; maintenance and defects; payment; default of employer or contractor and changes in contract cost.
>
> Excluded from the coverage of this law are disputes arising from employer-employee relationships which shall continue to be covered by the Labor Code of the Philippines.

And for the CIAC's proper acquisition of jurisdiction over a dispute involving construction in the Philippines, Section 2.3, Rule 2 and Subsection 2.3.1. of the 2010 CIAC Revised Rules of Procedure provides the following:

> SECTION 2.3. *Conditions for exercise of jurisdiction*. – For the CIAC to acquire jurisdiction, the parties to a dispute must be bound by an arbitration agreement in their contract or subsequently agree to submit the same to voluntary arbitration.
>
> 2.3.1. Such arbitration agreement or subsequent submission must be alleged in the Complaint. Such submission may be an exchange of communication between the parties or some other form showing that the parties have agreed to submit their dispute to arbitration. Copies of such communication or other form shall be attached to the Complaint.

Since respondent sufficiently pleaded the duly incorporated arbitration clause (as contained in the General Conditions of Contract in the PBDPIP, even if erroneously stated to be contained in the Special Conditions of Contract) of the Contract Agreements in his Request

for Arbitration;[72] and since there is no doubt that the Contract Agreements between the parties for the first and second projects were for government infrastructure projects, *i.e.*, road works construction and upgrading; and further, since the PBDPIP (which, to reiterate, is incorporated into the Contract Agreements both by stipulation and operation of law) specifically mentions CIAC jurisdiction and competence when applicable, the Court hereby rules that CIAC indeed had jurisdiction over Respondent's Request for Arbitration. This is despite the fact that the Contract Agreements themselves point to the General Conditions of Contract in the PBDPIP, and the fact that the latter mandates the incorporation of the CIAC's arbitration process in the language of the said Contract Agreements.

To rule that the said Contract Agreements did not have an explicitly stated stipulation for CIAC arbitration would be illogical, since the said Contract Agreements incorporated by reference the terms of the PBDPIP (which already contain an invocation of CIAC jurisdiction when proper). Moreover, the PBDPIP, which incorporates word for word Section 59 of the 2009 Revised IRR of R.A. No. 9184, can be read to mean that the arbitration process (including that of CIAC) shall be incorporated as a provision of the contract by operation of law without further action from the parties (*i.e.*, not as a mandate for all construction-related contracts to have an explicit mention of CIAC jurisdiction and competence). This, to the Court, is the proper interpretation of said provision in both the General Conditions of Contract in the PBDPIP and Section 59 of the 2009 Revised IRR of R.A. No. 9184. Besides, the Court has already ruled in *LM Power Engineering Corp. v. Capitol Industrial Construction Groups, Inc.*[73] (*LM Power Engineering*) that especially relative to CIAC cases, "courts should liberally construe arbitration clauses. Provided such clause is susceptible of an interpretation that covers the asserted dispute, an order to arbitrate should be granted. Any doubt should be resolved in favor of arbitration."[74]

Going now to the second issue, the Court disagrees with the OSG's position that the case was first cognizable as a money claim before the COA. Indeed, the Court already ruled in *Tourism Infrastructure and Enterprise Zone Authority v. Global-V Builders Co.*[75] that the jurisdiction of CIAC, once properly invoked, works to divest COA of its general and primary jurisdiction relative to money claims in construction disputes, *viz.*:

> TIEZA contends that the Court of Appeals erred in ruling that CIAC had jurisdiction over the dispute notwithstanding the primary jurisdiction of COA over the money claim of Global-V. Global-V's demand for payment should have first been brought as a money claim before COA, which has primary jurisdiction

> over the matter. The matter of allowing or disallowing the requests for payment is within the primary power of COA to decide. If there is a refusal on the part of a government official to grant a money claim, the proper remedy is with COA.
>
> The contention is unmeritorious.
>
> The jurisdiction of courts and quasi-judicial bodies is determined by the Constitution and the law. Section 4 of E.O. No. 1008 provides that the CIAC shall have *original* and *exclusive* jurisdiction over disputes arising from, or connected with, construction contracts, which may involve government or private contracts, provided that the parties to a dispute agree to submit the dispute to voluntary arbitration. In *LICOMCEN, Inc. v. Foundation Specialists, Inc.*, the Court held that the text of E.O. No. 1008 is broad enough to cover any dispute arising from, or connected with, construction contracts, whether these involve mere contractual money claims or execution of the works. What is only excluded from the coverage of E.O. No. 1008 are disputes arising from employer-employee relationships, which shall continue to be covered by the Labor Code of the Philippines.[76] (Italics in the original; citations omitted)

The abovementioned ruling has been reiterated in the more recent case of *Taisei Shimizu Joint Venture v. Commission on Audit*,[77] *viz.*:

> Considering that TSJV and DOTr had voluntarily invoked CIAC's jurisdiction, the power to hear and decide the present case has thereby been solely vested in the CIAC to the exclusion of COA. Being a specific law, EO No. 1008 providing for the CIAC's exclusive jurisdiction prevails over PD 1445, granting the COA the general jurisdiction over money claims due from or owing to the government. For this reason alone, the COA should have stayed its hands from modifying the CIAC's final arbitral award here, let alone from claiming exclusive jurisdiction over the case.[78]

Going now to the third and more critical issue of whether or not respondent's Request for Arbitration was time-barred, the Court requires a review of jurisprudence concerning the validity of stipulations concerning periods within which actions for enforcement can be brought. The Court ruled as early as *E. Macias & Co. v. China Fire Insurance & Co., Ltd*[79]

that a contractual stipulation in an insurance policy providing a shorter prescriptive period for the filing of the relevant claim in court was a valid stipulation, provided that the period was a reasonable one, *viz.*:

> Many of these cases above cited relate only to the general proposition that reasonable contractual limitations of actions will prevail over statutory limitations and do not specifically deal with exceptions to the statutory limitations such as the one found in section 49 of the Code of Civil Procedure. But it seems obvious that if a contractual limitation prevails over the statutory limitation it must also prevail over the exceptions to the statutory limitations; the contract necessarily superseded the statute and the limitations is in all its phases governed entirely by the former.[80]
>
> x x x x
>
> For the reasons stated and upon the authorities cited, we are constrained to hold that the failure of the plaintiff to sue the defendant insurance companies within the time limited in the insurance policies is fatal to his action and that the question is in nowise affected by section 49 of the Code of Civil Procedure. To so hold may bear harshly on the plaintiff in this particular case, but in matters of insurance law the importance of securing uniformity in judicial interpretation is such that we feel bound to follow the rule adopted by practically every court in the land. It may be observed that the question as to the reasonableness of a three months [*sic*] contractual limitation is not raised in the present case.[81]

The abovementioned case was reiterated in *Spouses Ang v. Fulton Fire Insurance Co.*,[82] *viz.*:

> The case of *E. Macias & Co. v. China Fire Insurance & Co.* has settled the issue presented by the appellees in the case at bar definitely against their claim. In that case We declared that the contractual limitation in an insurance policy prevails over the statutory limitation, as well as over the exceptions to the statutory limitations; that the contract necessarily supersedes the statute (of limitations) and the limitation is in all phases governed by the former. (*E. Macias & Co. v. China Fire Insurance & Co.*, 46 Phil., pp. 345-353.) As stated in said case

> and in accordance with the decisions of the Supreme Court of the United States in Riddlesbarger v. Hartford Fire Insurance Co. (7 Wall., 386), the rights of the parties flow from the contract of insurance, hence they are not bound by the statute of limitations nor by exemptions thereto. In the words of our own law, their contract is the law between the parties, and their agreement that an action on a claim denied by the insurer must be brought within one year from the denial, governs, not the rules on the prescription of actions.[83] (Italics supplied)

But in *Pao Chuan Wei v. Nomorosa*,[84] which involved a stipulation on a surety bond that limited the period within which to present any claim against said surety to only three months after the bond's expiration (and where the claim was filed almost two [2] years after the said deadline), the Court held that such a short stipulated period was void, or in any event, a condition precedent that did not merit outright dismissal on grounds of prescription:

> Indeed, as the parties expressly fixed the three-month period for presentation of the claim as a condition precedent, they must have intended to give the surety, if the claim is presented within that period, some time to decide whether to pay or not to pay. (Because if it agrees to pay and pays, no complaint need be filed in court.) Now then, if the claim is presented on the 90th or last day, to uphold the contention of appellee would deprive the surety of the chance to decide whether to pay or not to pay and would compel action on that same day—regardless of the surety's attitude on the matter. That would be non-sensical, to put strongly.
>
> Again, appellee's contention implies that as the cause of action did not arise until the claim was presented on the last day, such cause of action prescribed on that same day—if no complaint was filed on that very day. Evidently, the parties could not have contemplated—and agreed upon—such absurd result or requirement. And yet, if they had knowingly agreed thereto, the agreement is void because it fixed an unreasonable period of prescription for the creditor's right of action.[85]

And subsequently in *Philippine American General Insurance Co., Inc. v. Sweet Lines, Inc.*,[86] the Court upheld the contractual stipulation for a shorter period of sixty (60) days from accrual of right of action within which to file a suit against a common carrier, again based on the standard of reasonableness, *viz.*:

> On the other hand, the validity of a contractual limitation of time for filing the suit itself against a carrier shorter than the statutory period therefor has generally been upheld as such stipulation merely affects the shipper's remedy and does not affect the liability of the carrier. In the absence of any statutory limitation and subject only to the requirement of the stipulated limitation period, the parties to a contract of carriage may fix by agreement a shorter time for the bringing of suit on a claim for the loss of, or damage to, the shipment than that provided by the statute of limitations. Such limitation is not contrary to public policy for it does not in any way defeat the complete vestiture of the right to recover, but merely requires the assertion of that right by action at an earlier period than would be necessary to defeat it through the operation of the ordinary statute of limitations.[87]

Applying the aforementioned jurisprudence to the instant Petition, the Court must make a ruling as to whether the period of fourteen (14) days from notice of Petitioner's Decisions for Contract Termination (as provided for in the two Contract Agreements) was a reasonable stipulation not contrary to law, morals, good customs, public order, or public policy (as mandated by Article 1306 of the Civil Code of the Philippines).

The Court at present rules in the negative.

Such a short period of fourteen (14) days within which a contractor may refer a procuring entity's decision (specifically, to terminate a construction contract) to a designated arbiter is too unreasonable and contrary to public policy. Said period is surely not enough time for an aggrieved contractor to prepare adequately for a request for arbitration with the CIAC, which is effectively akin to filing an ordinary collection case in the regular courts. Said period is even one (1) day less than the period for perfecting an ordinary appeal, *i.e.*, fifteen (15) days from notice. The Court is also at a loss in terms of determining the statutory or even the practical basis for the fourteen-day period as stated in the PBDPIP, since there appears to be none that can be enough justification or basis for the stipulation.

The fact that the said period is hidden away in the PBDPIP and not explicitly mentioned in the contracts proper, and the likely inimical effect such an acutely short prescriptive period would have on the rights of any and all contractors doing business with the Philippine Government, militate against upholding the said stipulated period which was ostensibly agreed upon to be the law between petitioner and respondent. Truly, parties to a contract

have the right to stipulate terms and conditions to govern the relations between and amongst them, but such right is not absolute, and is accordingly tempered by both the Civil Code of the Philippines and the courts.

At best, said period only must pertain to minor and ongoing matters relative to the implementation of an infrastructure project, but not as to completed (albeit defective) projects. To apply the short period to respondent's timeline for filing his Request for Arbitration with the CIAC would be an unjust and unreasonable imposition, and in any event, the doubt as to the proper prescriptive period of respondent's action created by the said unreasonable period should be resolved in favor of arbitration in keeping with the Court's ruling in *LM Power Engineering*.[88] Consequently, the 14-day prescriptive period, as it is construed by petitioner to be such, is hereby declared void, and thus the prescriptive period relative to the two Contract Agreements are properly declared to be 10 years from accrual of right of action in accordance with Article 1144 of the Civil Code of the Philippines. This is also because there is no prescriptive period stated in E.O. No. 1008 and the 2010 CIAC Revised Rules of Procedure. Thus, the general provisions of the law on prescription are applicable at bar.

Going now to the fourth issue of whether or not respondent failed to exhaust administrative remedies as a precondition to CIAC arbitration, Section 3.2, Rule 3 of the 2010 CIAC Revised Rules is quoted in full below for easy reference:

> SECTION 3.2. *Preconditions*. The claimant against the government, in a government construction contract, shall state in the complaint/request for arbitration that 1) all administrative remedies have been exhausted, or 2) there is unreasonable delay in acting upon the claim by the government office or officer to whom appeal is made, or 3) due to the application for interim relief, exhaustion of administrative remedies is not practicable.
>
> 3.2.1. The claimant in a private construction contract has the same obligation as the above to show similar good faith compliance with all preconditions imposed therein or exemptions therefrom.
>
> 3.2.2. In case of non-compliance with the precondition contractually imposed, absent a showing of justifiable reasons, exemption, or a waiver thereof, the tribunal shall suspend arbitration proceedings pending compliance therewith within a reasonable period directed by the Tribunal.

Going over respondent's Request for Arbitration, it appears that he checked the box labeled "[i]n case of government contract, communications made with the highest authority for exhaustion of administrative remedies" under the heading "Documents Required."[89] It appears that respondent was referring to his Letters both dated September 18, 2013, which were in response to the Notices to Terminate from Petitioner's Regional Director. There is no indication in the record that respondent gave any response relative to the actual Decisions for Contract Termination for the two projects, or any recourse he resorted to for the said terminations' reconsideration aside from the bare allegations in his Complaint that he demanded payment from Petitioner in 2012 and on September 18, 2013 (*i.e.*, the date of his Letters relative to the Notices to Terminate).

The doctrine of exhaustion of administrative remedies is a hallowed staple of Philippine jurisprudence relative to the power of the courts to review the actions of administrative officers and tribunals. This, however, applies only suppletorily to the case at bar, since it is an administrative tribunal itself (*i.e.*, CIAC) which requires in its own rules of procedure the same exhaustion from private contractors before invoking CIAC arbitral jurisdiction. The Court has succinctly defined the doctrine in *Samar II Electric Cooperative, Inc. v. Seludo, Jr.*,[90] *viz.*:

> The Court, in a long line of cases, has held that before a party is allowed to seek the intervention of the courts, it is a pre-condition that he avail himself of all administrative processes afforded him. Hence, if a remedy within the administrative machinery can be resorted to by giving the administrative officer every opportunity to decide on a matter that comes within his jurisdiction, then such remedy must be exhausted first before the court's power of judicial review can be sought. The premature resort to the court is fatal to one's cause of action. Accordingly, absent any finding of waiver or estoppel, the case may be dismissed for lack of cause of action.[91] (Citations omitted)

The doctrine of course has its established exceptions. In *Maglalang v. Philippine Amusement & Gaming Corporation*,[92] these were enumerated as follows:

> However, the doctrine of exhaustion of administrative remedies is not absolute as it admits of the following exceptions:

> (1) when there is a violation of due process; (2) when the issue involved is a purely legal question; (3) when the administrative action is patently illegal amounting to lack or excess of jurisdiction; (4) when there is estoppel on the part of the administrative agency concerned; (5) when there is irreparable injury; (6) when the respondent is a department secretary whose acts as an alter ego of the President bears the implied and assumed approval of the latter; (7) when to require exhaustion of administrative remedies would be unreasonable; (8) when it would amount to a nullification of a claim; (9) when the subject matter is a private land in land case proceedings; (10) when the rule does not provide a plain, speedy and adequate remedy, and (11) when there are circumstances indicating the urgency of judicial intervention, and unreasonable delay would greatly prejudice the complainant; (12) where no administrative review is provided by law; (13) where the rule of qualified political agency applies; and (14) where the issue of non-exhaustion of administrative remedies has been rendered moot.[93]

Applying the doctrine and its established exceptions to the instant Petition, one needs to answer the following preliminary question: was there anything that Respondent needed to do relative to Petitioner's administrative processes *vis-à-vis* the Decisions for Contract Termination?

The Court answers this query in the negative.

Judicial notice is hereby taken of Petitioner's Department Order (DO) No. 24 (dated May 7, 2007), which provided for the delegated authorities concerning multiple scopes of decision-making to petitioner's bureaus and regional offices. Specifically, on page 12 of DO No. 24's Annex A (entitled "Omnibus Levels of Authorities of DPWH Key Officials"), the authority for full approval of contract terminations relative to civil works by contract had been delegated to Petitioner's Regional Directors. Evidently, there is also no indication therein that said approval is appealable to petitioner's Secretary. Thus, for all intents and purposes, respondent could already and validly consider the Decisions for Contract Termination as final and un-appealable. With no administrative review established for appealing a decentralized and validly delegated decision to terminate the Contract Agreements for the

two projects, respondent was well within his rights to resort to CIAC arbitration for having no more administrative remedy to resort to. This is even if he ultimately failed to plead the said redundancy in his Complaint, since he did indicate anyway the fact of issuance of the Decisions for Contract Termination by petitioner's Regional Director (which was a final and un-appealable action administrative action as presently determined by the Court).

Moreover, it would cause unreasonable delay and prejudice to respondent if the Court were to remand the case to the CIAC the amendment of the Complaint to simply incorporate said fact of redundancy of exhaustion of petitioner's administrative remedies at this stage of the proceedings.[94] Great and irreparable damage would thus befall respondent's rights to be recompensed for services rendered if the Court were to be strict in considering said *lacuna* in the Complaint as a failure to comply with the 2010 CIAC Revised Rules of Procedure. This is also even if respondent's representations in his Request for Arbitration actually pertained to his communications to petitioner relative to the earlier Notices to Terminate, and not relative to the actual Decisions for Contract Termination. Since respondent had no need to exhaust any administrative remedy—*i.e.*, since there was no available remedy anymore—his failure to plead the same in his Complaint in compliance with Section 3.2, Rule 3 of the 2010 CIAC Revised Rules of Procedure can be seen by the Court as an instance of excusable negligence on his part.

As to the OSG's contention that respondent failed to satisfy the condition precedent of first resorting to mutual consultation before resorting to CIAC arbitration, the Court finds that this provision in Section 21.1 of the PBDPIP[95] is not in the nature of a condition precedent that would bar CIAC jurisdiction. Nothing in the said provision indicates that mutual consultation must first be resorted to before resorting to arbitral proceedings, contrary to the OSG's assertion. Neither is there any explicit requirement of formal demand before the CIAC may assume jurisdiction, since the 2010 CIAC Revised Rules of Procedure only requires (as an alternative to proof of exhaustion of administrative remedies) a claimant's pleading of unreasonable delay on the part of the procuring entity. While admittedly, there are no attached communications subsequent to the Decisions for Contract Termination indicating any request or follow-up on respondent's part for petitioner's payment of the amounts due, the Court considers respondent's Letters in response to the initial Notices to Terminate and the ultimate fact of petitioner's non-payment to date as sufficient for present purposes. To require respondent to ask petitioner once again to reconsider the termination of the two projects' contracts would be an exercise in futility at this stage, which is already nearly a decade after the said contracts' termination.

Going now to the fifth and final issue of whether or not respondent was entitled to the amounts prayed for, the Court reiterates the rule that petitions for review on *certiorari* filed under Rule 45 of the Rules of Court only deal with questions of law, and not with questions of fact. Moreover, the Court will only entertain such petitions for special and important reasons, since the Court's review is discretionary. In *Pascual v. Burgos*,[96] the Court held the following:

> Review of appeals filed before this Court is "not a matter if right, but of sound judicial discretion[.]" This Court's action is discretionary. Petitions filed "will be granted only when there are special and important reasons[.]" This is especially applicable in this case, where the issues have been fully ventilated before the lower courts in a number of related cases.
>
> The Rules of Court require that only questions of law should be raised in petitions filed under Rule 45. This court is not a trier of facts. It will not entertain questions of fact as the factual findings of the appellate courts are "final, binding[,] or conclusive on the parties and upon this Court" when supported by substantial evidence. Factual findings of the appellate courts will not be reviewed nor disturbed on appeal to this Court.[97] (Citations omitted)

The Court also laid out the exceptions to the aforementioned rule, *viz.*:

> However, these rules do admit [of] exceptions. Over time, the exceptions to these rules have expanded. At present, there are 10 recognized exceptions that were first listed in *Medina v. Mayor Asistio, Jr.*:
>
> (1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth

> in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record. (Citations omitted)
>
> These exceptions similarly apply in petitions for review filed before this court involving civil, labor, tax, and criminal cases.[98] (Citations omitted)

In the same case, the Court restated the definition of question of fact (which a Rule 45 petition for review on *certiorari* normally does not delve into), *i.e.*, a question that "requires this Court to review the truthfulness or falsity of the allegations of the parties. This review includes assessment of the 'probative value of the evidence presented.' There is also a question of fact when the issue presented before this Court is the correctness of the lower courts' appreciation of the evidence presented by the parties."[99]

Looking at the rulings of both the CIAC and the CA, and seeing that none of the 10 exceptions apply to the case at bar, the Court sees no reason to deviate from the general rule of upholding their findings of fact relative to the CIAC's Final Award as modified by the CA.

Verily, and in any event, there was enough substantial evidence on hand to support the rulings of the CIAC and the CA. The CIAC's Final Award considered petitioner's admission regarding the 100% completion of the first project as undisputed, despite the defects. The CIAC even the photographs of the road sections reasonably indicated that the projects were completed. Any remaining works thereon were in the nature of rectification of minor defects, which would presuppose the project's completion. The CIAC was thus correct in holding that it would be an absurdity for petitioner to still be able to terminate the Contract Agreements for work already completed on the sole basis of failure to complete the rectification works. Besides, petitioner's supposed ground of respondent not complying with the former's lawful instructions could only be applied whilst the projects were still ongoing or being implemented. Moreover, the minor defects needing rectification did not justify the total cancellation of the Contract Agreements, since they were not in the nature of substantial breaches.

Notably, the Court also must point out that the final inspections were conducted by petitioner's teams long after the projects' scheduled completion. Looking at their respective Constructors' Performance Summary Reports, the first project was supposed to have been

completed by September 20, 2009, whilst the second project was supposed to have been completed by September 12, 2011. Having the final inspection conducted many years after the projects' scheduled completion is a suspect fact, since wear and tear would have inevitably reduced the quality of the completed projects—hence the minor defects requiring rectification. Notably again, there is nothing in the record indicating when the projects were reported to have been completed, but CIAC was correct in rejecting petitioner's assertion that the projects were still ongoing as of the time of the inspections.

Going over the CA's findings, the Court sees no reversible error in the CA's proper modification of the CIAC's award. Respondent is thus only entitled to the remaining balance under the first project, since the CA correctly ruled that there was no definitive declaration of the second project's completion in the record. Respondent is also not entitled to arbitration costs and attorney's fees, since Section 1, Rule 142 of the Rules of Court indeed mandates that "[n]o costs shall be allowed against the Republic of the Philippines unless otherwise provided by law." There being no mention either E.O. No. 1008 or any other statute that would indicate that the Republic is allowed to bear CIAC arbitration costs, the CA was correct in modifying this as part of the CIAC Final Award's dispositive portion.

All told, the Contract Agreements coveting the two projects awarded by Petitioner to Respondent both provided for CIAC arbitral jurisdiction, which was properly invoked in time without the need for COA's general and primary jurisdiction over money claims, nor for the exhaustion of any administrative remedies (since there no more to be exhausted). No reversible error, or any grave abuse of discretion, can be found in the rulings of both the CIAC and the CA, since their factual findings were based on substantial evidence in the record.

WHEREFORE, the instant Petition is hereby **DENIED** for lack of merit, and accordingly, the Decision dated February 28, 2018 and Resolution dated January 10, 2019 of the Court of Appeals 14th Division in CA-G.R. SP Nos. 143721 & 145399 are hereby **AFFIRMED**.

SO ORDERED.

Caguioa (Chairperson), Inting, Dimaampao, and *Singh, JJ.*, concur.

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[1] *Rollo*, pp. 80-117.

[2] *Id.* at 119-128; penned by Associate Justice Eduardo B. Peralta, Jr., with Associate Justices

Ricardo R. Rosario (now a Member of this Court) and Ronaldo Roberto B. Martin, concurring.

[3] *Id.* at 129-134.

[4] *Id.* at 492-532.

[5] *Id.* at 220-253.

[6] *Id.* at 135-137.

[7] *Id.* at 153-155.

[8] *Id.* at 138-140.

[9] *Id.* at 138.

[10] *Id.* at 141-144.

[11] *Id.* at 141.

[12] *Id.* at 145.

[13] *Id.* at 146.

[14] *Id.*

[15] *Id.* at 147-148.

[16] *Id.* at 148.

[17] *Id.* at 149.

[18] *Id.*

[19] *Id.* at 150-151.

[20] *Id.* at 150.

[21] *Id.* at 151.

[22] *Id.* at 156-159.

[23] *Id.* at 156.

[24] *Id.* at 160-163.

[25] *Id.* at 164.

[26] *Id.* at 165.

[27] *Id.*

[28] *Id.* at 166-167.

[29] *Id.* at 168.

[30] *Id.* at 169-170.

[31] *Id.* at 171.

[32] *Id.* at 172.

[33] *Id.* at 173-180.

[34] *Id.* at 183-191.

[35] *Id.* at 192-199.

[36] Approved on January 10, 2003.

[37] *Rollo*, p. 198.

[38] 654 Phil. 755 (2011).

[39] *Rollo*, pp. 200-212.

[40] ART. 1144. The following actions must be brought within ten years from the time the right of action accrues:

(1) Upon a written contract;
(2) Upon an obligation created by law;
(3) Upon a judgment.

[41] ART. 1148. The limitations of action mentioned in articles 1140 to 1142, and 1144 to 1147 are without prejudice to those specified in other parts of this Code, in the Code of Commerce, and in special laws.

[42] *Rollo*, pp. 215-218.

[43] *Id.* at 218.

[44] *Id.* at 216.

[45] *Id.* at 217.

[46] *Id.* at 218.

[47] *Id.* at 220-253.

[48] *Id.* at 254-258.

[49] *Id.* at 403-424.

[50] *Id.* at 492-532.

[51] *Id.* at 531.

[52] *Id.* at 499-500.

[53] *Id.* at 503.

[54] GPPB Resolution No. 018-2004 (s. 2004), Annex "A", Part II, Item 7.

[55] *Id.*, Item 8.

[56] *Rollo*, p. 505.

[57] *Id.* at 511-512.

[58] *Id.* at 534-569.

[59] *Id.* at 119-128.

[60] *Id.* at 127-128.

[61] *Id.* at 647-667.

[62] *Id.* at 668-671.

[63] *Id.* at 129-134.

[64] *Id.* at 133.

[65] *Id.* at 705-719.

[66] **Lopez v. Saludo, Jr., G.R. No. 233775,** September 15, 2021, citing **Miro v. Vda. de Ereredos**, 721 Phil. 772 (2013).

[67] **Pascual v. Burgos**, 776 Phil. 167 (2016).

[68] *Rollo*, p. 135.

[69] *Id.*

[70] *Id.* at 153.

[71] The SCC here is the abbreviation of the Special Conditions of Contract, which provide a template for additional details for an infrastructure project's implementation, including specifically a named arbiter in case of disputes.

[72] *Rollo*, p. 174.

[73] 447 Phil. 705 (2003).

[74] *Id.* at 714, citing **Seaboard Coastline Railroad Co. v. National Rail Passenger Corp.**, 554 F2d 657 (United States Court of Appeals, 5th Circuit), June 22, 1977.

[75] 841 Phil. 297 (2018).

[76] *Id.* at 321-322.

[77] **G.R. No. 238671**, June 20, 2020, 936 SCRA 299.

[78] *Id.* at 384.

[79] 46 Phil. 345 (1924).

[80] *Id.* at 352-353.

[81] *Id.* at 357-358.

[82] 112 Phil. 844 (1961).

[83] *Id.* at 849-850.

[84] 103 Phil. 57 (1958).

[85] *Id.* at 59-60.

[86] 287 Phil. 212 (1992).

[87] *Id.* at 227, citing **Spouses Ang v. Fulton Fire Insurance Co.**, *supra* note 82.

[88] *Supra* note 73.

[89] *Rollo*, p. 172.

[90] 686 Phil. 786 (2012).

[91] *Id.* at 796.

[92] 723 Phil. 546 (2013).

[93] *Id.* at 557, citing **Hong Kong & Shanghai Banking Corp., Ltd. v. G.G. Sportswear Manufacturing Corp.**, 523 Phil. 245, 253-254 (2006), further citing **Province of Zamboanga Del Norte v. Court of Appeals**, 396 Phil. 709, 718-719 (2000).

[94] See **Vigilar v. Aquino**, 654 Phil. 755 (2011).

[95] "If any dispute or difference of any kind whatsoever shall arise between the parties in connection with the implementation of the contract covered by the Act and this IRR, the parties shall make every effort to resolve amicably such dispute or difference by mutual consultation."

[96] 776 Phil. 167 (2016).

[97] *Id.* at 181-182.

[98] *Id.* at 182-183.

[99] *Id.* at 183. Citations omitted.

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